



Billing Code 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 031125294-4091-02]

RIN 0648-WCR-A002

Fisheries Off West Coast States; the Highly Migratory Species Fishery; Closure

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting fishing with large-mesh drift gillnet (DGN) gear (≥ 14 inches mesh) off the coast of southern California east of 120° W. meridian from June 1, 2019, through August 31, 2019. This prohibition is based on the Assistant Administrator for Fisheries' (AA's) determination that El Niño conditions are occurring off the coast of southern California. This action protects Endangered Species Act-listed loggerhead sea turtles (*Caretta caretta*), specifically the endangered North Pacific Ocean Distinct Population Segment.

DATES: Effective 12:01 am Pacific Daylight Time (PDT), June 1, 2019, through 11:59 pm PDT, August 31, 2019.

FOR FURTHER INFORMATION CONTACT: Chris Fanning, West Coast Region (WCR), NMFS, (562) 980-4198, chris.fanning@noaa.gov.

SUPPLEMENTARY INFORMATION: The DGN fishery is managed under the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species

(50 CFR part 660, subpart K) and occurs off the coast of California. NMFS regulations provide that, “No person may fish with, set, or haul back drift gillnet gear in U.S. waters of the Pacific Ocean east of the 120° W. meridian from June 1 through August 31 during a forecasted, or occurring, El Niño event off the coast of southern California” (50 CFR 660.713(c)(2)). This area, which falls within the Southern California Bight (SCB), is referred to in the regulations as the “Pacific loggerhead conservation area.”

Under 50 CFR 660.713(c)(2)(ii), the AA is to rely on information developed by NOAA offices (the Climate Prediction Center (CPC) and the West Coast Office of the Coast Watch program) to make the determination that an El Niño event is forecasted or occurring off southern California. The AA is to use monthly sea surface temperature (SST) charts to determine whether there are warmer-than-normal SSTs off southern California “during the months prior to the closure months for years in which an El Niño event has been declared” by the CPC. Specifically, the AA is to use SST data from the third and second months prior to the month of closure.

NMFS published these regulations to protect loggerhead sea turtles, which are listed under the Endangered Species Act. The regulations addressed a reasonable and prudent alternative (RPA) included in NMFS’ 2000 biological opinion on issuance of an incidental take permit under the Marine Mammal Protection Act. The biological opinion concluded that bycatch in the DGN fishery was likely to jeopardize the continued existence of loggerhead sea turtles and, as an RPA, recommended the fishery be closed during the summer months when El Niño conditions are present to avoid the likelihood of jeopardy. The regulations implemented in 2003 addressed this RPA.

On February 14, 2019, the CPC issued an *El Niño Advisory*, declaring that El Niño conditions formed during January 2019, based on the presence of above-average SSTs across most of the equatorial Pacific Ocean. Since that initial advisory, all monthly CPC updates have stated that El Niño conditions remain in these waters. The May 9, 2019, update reaffirmed El Niño conditions are currently present.

On May 7, 2019, NMFS staff reviewed the SST anomalies in the SCB during March and April of 2019, relying on SST maps available through NOAA's Coast Watch program (for details see <http://coastwatch.pfeg.noaa.gov/erddap/index.html>). These maps indicated that SSTs were above normal in the SCB. NMFS concluded that a determination of El Niño conditions off southern California is warranted based on SSTs that are warmer than normal during the third and second months prior to the month of the closure, consistent with regulations at 50 CFR 660.713(c)(2)(ii).

If SSTs return to normal or below normal during a closure period, regulations at 50 CFR 660.713(c)(2)(iii) state that the AA may re-open the fishery after publishing a Federal Register notice announcing that El Niño conditions are no longer present in the SCB.

Classification

This action is required by regulations at 50 CFR 660.713 and is exempt from Office of Management and Budget review under Executive Order 12866.

NMFS finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) for the time-area closure of the DGN fishery. Notice and comment procedures are impracticable and contrary to the public interest. The most recent El Niño determination

occurred on May 9, 2019, and regulations require that the closure period begin on June 1; therefore, there is insufficient time for notice and comment procedures. For the same reasons, NMFS also finds good cause under 5 U.S.C. 553(d)(3) to waive the general requirement for a 30-day delay in effectiveness for this action. This measure is based upon the best available information and is necessary for the conservation of loggerhead sea turtles. The closure period anticipated by the regulation ends, at the latest, on August 31, 2019. A delay in effectiveness may allow the fishery to interact with and injure or kill loggerhead sea turtles that may occur within the SCB during the time period in which the regulation was intended to protect loggerheads.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 21, 2019.

Jennifer M. Wallace,
Acting Director,
Office of Sustainable Fisheries,
National Marine Fisheries Service.

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